IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.213 OF 2001

IN

NOTICE OF MOTION NO.3013 OF 2000

IN

ADMIRALTY SUIT NO.26 OF 1992

...

m.v."HAPPINESS II" & Anr. ...Appellants

v/s.

Indian Petrochemicals Corporation
Ltd. & ors. ...Respondents

...

Mr.V.R.Dhond with Mr.Kunal Shah i/b Bhatt & Saldhana for the Appellants.

Mr.S.G.Walon for Respondent No.1.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 5TH SEPTEMBER, 2007

P.C.:

1. By this Appeal, the Appellants challenges the order passed by the learned single Judge of this Court in Notice of Motion No.3013 of 2000 dated 8th December, 2000. By that order, the learned single Judge has rejected the Notice of Motion taken out by the present Appellants. The present Appellants are Defendants Nos. 1 & 2 and the present Respondent No.1 is the original Plaintiff. The Plaintiff filed Admiralty Suit No.25 of 1992 stating therein that the first Defendant is a foreign vessel flying a Panamanian flag and present whereabouts of that vessel are unknown. Second Defendant is a company incorporated under the Laws of Greece, and thus it is a foreign company. According to plaint allegation, the second Defendant is the owner of Defendant No.1. According to plaint averments some cargo was booked

on that vessel by the Plaintiff through the Defendant No.3. Its destination was Mumbai. When the cargo was discharged, it was found that the cargo is damaged. According to the Plaintiff, the Plaintiff has claim against the Defendants Nos. 1 & 2 for damage suffered by the cargo.

2. In this suit, Notice of Motion was taken out by the Defendants Nos. 1 & 2 for dismissal of the suit, because according to the Defendants Nos.1 & 2 the suit was not maintainable in the admiralty jurisdiction of this court. According to Defendants Nos. 1 & 2, when the suit was filed, the Defendant No.1-vessel which is a foreign vessel was admittedly not within the territorial water of India. The Defendant No.2 also does not carry on business within the original jurisdiction of this Court. It was submitted that in relation to a foreign vessel, the device of arrest of vessel should be adopted to assume jurisdiction over the owner of the vessel. It is further submitted that according to averments in the plaint the suit was filed in the admiralty jurisdiction of this court and for a suit to be maintainable in the admiralty jurisdiction of this court, the vessel should either be the vessel of

Indian Registry or if the vessel is of Foreign Registry, the vessel should be arrested for the court to assume its jurisdiction over the subject matter. The Defendants Nos. 1 & 2 relied on observations of the Supreme Court in its judgment in the case of m.v.Elisabeth and ors. v/s. Harwan Investment & Trading Pvt.Ltd. AIR 1993 SC 1014.

3. That motion was opposed by the Plaintiff. According to the Plaintiff even without arresting the vessel and without being the vessel within the territorial water of India, a suit can be filed in the admiralty jurisdiction of this court against the foreign vessel.

4. The motion has been decided, as observed above, by order dated 8-12-2000. The learned single Judge has held that the court has the jurisdiction as can be seen from the averments of the plaint to entertain the suit in its admiralty jurisdiction. The learned Counsel appearing for the Defendants Nos. 1 & 2 relying on various paragraphs of the judgment of the Supreme Court in the case of m.v. Elisabeth, submitted that because the Defendant No.1 is a foreign vessel, in no case suit could have been

instituted in the admiralty jurisdiction against a foreign vessel without that foreign vessel being within the territorial water of India.

5. Mr.S.G.Walon, the learned Counsel appearing for the original Plaintiff stated that he has no instructions to argue this appeal from the Respondents. We have perused the record.

6. From the averments in the plaint it is clear that the suit is not filed in the original civil jurisdiction of this court, but in the admiralty jurisdiction of this court. Admittedly, on the date on which the suit was instituted, the Defendant No.1 which is a foreign vessel was not within the territorial water of India. In our opinion, the observations of the Supreme Court in paragraphs 55 & 56 of its judgment in the case of m.v. Elisabeth (supra) are relevant. They read as under:-

> 55. A personal action may be brought against the defendant if he is either present in the country or submits to jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for release of his ship against which

> proceedings in rem have been instituted, he submits himself to jurisdiction.
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> 56. An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is, however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world who might dispute the plaintiff's claim.

7. Perusal of the above quoted observations from the judgment of the Supreme Court make it clear that in order that for an admiralty court to assume jurisdiction on the foreign vessel, it is necessary that the court should adopt the device of arrest of vessel and for the court ordering arrest of foreign

vessel, the vessel must be within the territorial water of India. So far as the order passed by the learned single Judge is concerned, the deciding paragraphs of the order are paragraphs 9, 10 & 11. In paragraph 9, the learned single Judge records that it is true that the admiralty court would get jurisdiction over the vessel, if the vessel is within the territorial water of this country. But then he says that it cannot be said that because the vessel is not within the territorial waters, the court gets no jurisdiction, and according to him such argument cannot be accepted because of the peculiar plea raised in the plaint. In our opinion, once having accepted that in order that admiralty court gets jurisdiction over the foreign vessel, presence of that vessel in the territorial water of that country is necessary, then the Plaintiff had to demonstrate that the court has the admiralty jurisdiction over the foreign vessel though the vessel is not within the territorial water of India. Perusal of paragraph 10 shows that the learned single Judge was considering whether cause of action on the basis of which the suit was filed has arisen within the jurisdiction of this court. Firstly, the suit was not filed in the original civil jurisdiction of this

court. Even assuming that the suit was filed in the original civil jurisdiction of this court, as the cargo was booked from the place beyond the original jurisdiction of this court and as the cargo's destination was Mumbai only part of cause of action has arisen in Mumbai, then also the suit will not be maintainable without obtaining leave under Clause 12 of the Letters Patent.

8. Taking overall view of the matter, in our opinion, considering the allegations in the plaint, in the absence of the Defendant No.1-foreign vessel being within the territorial water of India, the suit which was in the nature of action in rem in the admiralty jurisdiction was not maintainable.

9. In the result, therefore, the appeal succeeds and is allowed. The order impugned in the appeal is set aside. The Notice of Motion No.3013 of 2000 is granted in terms of prayer clause (a), restricted to Defendants Nos. 1 & 2 only.

10. Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H. BHATIA, J.)